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John Muraca

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EXAMINER

NGUYEN, TRAN N

ART UNIT

PAPER NUMBER

3626

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/853,703	Applicant(s) MURACA, JOHN	
	Examiner Tran Nguyen	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-21,23-35 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-21,23-35 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/14/2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claim(s) 1-5, 7, 9-19, 21, 23-33, 35, 37-42 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (5664109) in view of Applicant Admitted Prior Art (AAPA).

It is noted that the official notice taken in a previous Office Action is taken to be AAPA because Applicant failed to adequately traverse Examiner's assertion.

As per claim 1, Johnson teaches a system (reads on "an apparatus") (Figure 1), comprising a computer system (Figure 1) comprising:

(a) a network (Figure 1);

(b) a server computer and a subscriber client computer (Figure 1), wherein the subscriber need not adopt any particular format to view the data stored on the server (reads on "disparate operating systems") (column 2 line 29).

While Johnson does not specifically teach a handheld computer, AAPA teaches that laptop computers and palmtop computers are old and well established in the art of network computing.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of AAPA within the embodiment of Johnson with the motivation of providing physicians with wireless computing platforms for convenience.

Johnson further teaches software capable of:

(c) sharing patient records (reads on "portability enabling software") (column 2 line 13-26);

(b) storing a master patient record (reads on “master control file”) (Figure 7 label 702);

(c) sharing (reads on “controlling and providing interoperability”) medical records between a plurality of providers, wherein each provider need not adopt standard patient identifiers, medical formats, hardware, or software (reads on “computer platforms operating on disparate operating systems”) (column 2 line 27-37);

(d) using software to interface with a database containing therein text data, image data, patient records (Figure 7), and the plurality of providers (Figure 2).

(e) the master patient record is capable of being used to serve a plurality of queries from the plurality of subscribers (reads on “interfaces with the disparate operating systems”) (Figure 8 label 804-805);

(f) the software capable of allowing the subscriber computer to view data stored on the server computer (Figure 1);

(g) software stored on the server computer and software stored on the subscriber computer to control operation and interaction of both (Figure 1), wherein both software systems interact with each other over network (Figure 1);

(h) the master patient record is capable of mapping documents containing therein text and image data stored in a database to patient records (Figure 7);

(i) the system is capable of maintaining the database (Figure 7);

(j) receiving and storing the documents (Figure 4-6);

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(k) storing (reads on “capture”, “populate”, “maintain”) and retrieving the stored documents, wherein the documents are stored in their native formats (reads on “a plurality of image and text formats”) (Abstract and throughout);

(l) the master patient record is capable of linking with a plurality of documents in any format (Figure 7, Abstract), and the plurality of subscribers (Figure 1);

(m) providing patient data (reads on “patient episode data”) electronically over network (Figure 2).

Johnson further teaches that computer security is well known and should be applied to medical information (column 14 line 4-25).

Johnson further teaches that e-mail is also known in the art and may be used to communicate medical data (column 5 line 23-25).

Johnson further teaches receiving the transmitted patient data for storage (Figure 2 label 208).

Johnson does not teach “a secure file, transmitting the secure file as an e-mail attachment, retrieving the patient episode data from the secure file”.

AAPA teaches that sending a file via encrypted email is old and well established in the art of network security.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of AAPA within the embodiment of Johnson and AAPA with the motivation of providing an efficient form of file transfer that is easy for physicians to use.

The skilled artisan would have recognized the benefit that since physicians are already familiar with emailing, it would be easier to use email to submit patient data than to train physicians to use a different interface.

As per claim 2, Examiner submits that any hand-held device within the scope of claim 1 and capable of communicating with the apparatus inherently executes “medical software” to communicate with the claimed apparatus.

Therefore, this claim is rejected for substantially the same rationale as applied to claim 1 above, and incorporated herein.

As per claim 3, Johnson teaches that the system is capable of accepting documents from the plurality of subscribers (reads on “interoperability to populate, maintain”) (Figure 1) and retrieving information for the plurality of subscribers (Figure 8).

As per claim 4, Johnson teaches that the system is capable of maintaining the database (reads on “controls path and name of folder images, path to and name of the database, database field names, attributes, and locations on the folder image”) (Figure 7, Figure 3).

Examiner considers a database table containing therein the documents to be a “folder”.

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As per claim 5, Johnson teaches storing the document with the original headings (reads on "each field name") (Figure 5 label ADMITTED WITH, MEDICAL SUMMARY, etc.).

As per claim 7, Johnson teaches linking the document identifier to the master patient identifier for display (reads on "name") (Figure 7 label 706).

Examiner also considers the foreign key linking to be a form of "pointer".

As per claim 9, Johnson teaches that the system is capable of storing medical data (Figure 7).

As per claim 10, Johnson teaches that the system is capable of allowing remote subscribers to review patient records (Figure 8).

As per claim 11, Johnson teaches that the system is capable of allowing remote subscribers to review patient records (reads on "health indicators") (Figure 8).

As per claim 12, this claim is rejected for substantially the same rationale as applied to claim 1 above, and incorporated herein.

Examiner considers encryption to be a form of "compresses".

As per claim 13, this claim is rejected for substantially the same rationale as applied to claim 1 above, and incorporated herein.

As per claim 14, Johnson teaches database triggers capable of notifying subscribers that new patient data is available for a specific patient of interest (Figure 4 label 422).

As per the set of claim(s): 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 37, 38, 39, 40, 41, 42, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, respectively, and incorporated herein.

Claim(s) 6, 20, 34 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson and AAPA as applied to parent claims 4, 19, 32 above, and further in view of Amit (Federated Database Systems for Managing Distributed, Heterogeneous, and Autonomous Databases, MAILED 12/18/2008).

As per claim 6, Johnson does not teach “the pointer to and the name of the database indicates the database”.

Amit teaches a federated database system, wherein schemas are mapped (reads on “the pointer to and the name”) between databases (page 192 Section 1.1).

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At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of Amit within the embodiment of Johnson and AAPA with the motivation of providing increased availability, increased reliability, and improved access time (Amit; page 185 column 2 Section Distribution).

As per the set of claim(s): 20, 34, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 6, 20, respectively, and incorporated herein.

Response to Arguments

Applicant's arguments filed 10/29/2010 have been fully considered but they are not persuasive.

On page 9 Applicant argues:

Moreover, Johnson does not identify or address providing wireless platforms for the convenience of physicians or discuss a "hand-held device".

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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In this case, Examiner did not rely on Johnson for the feature of handheld devices. Clearly, Johnson would not have this feature. Instead, Examiner relied on AAPA for this feature.

On page 9 Applicant argues:

However, neither Johnson nor the AAPA, either alone or in combination, discusses or suggests the features of the present invention as recited in claims 1-5, 7, 9-19, 21, 23-33, 35, and 37-42 of the present application.

More specifically, neither Johnson nor the AAPA, either alone or in combination, discusses or suggests the features of amended claims 1, 15, and 29 of the present application (using the recitation of claim 1 as an example):

"a computer system including:

a network;

computer platforms operating on disparate operating systems including a server and client computers comprising a personal computer and a hand-held device; and

portability enabling software including a master control file controlling and providing interoperability of a medical records system between the computer platforms operating on the disparate operating systems, the master control file interfacing between a database of text and image data and medical records and each of the disparate operating systems, the master control file providing an interface between the medical records system and the disparate operating systems, a part of the master control file being stored on the server and another part of the master control file being stored on the client computers, the parts of the master control file interfacing with each other".

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

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On page 10 Applicant argues:

(a) The Examiner relies upon Johnson, col. 2, at lines 13 - 26, as discussing "portability enabling software". However, Johnson, col. 2, at lines 13 - 26, discusses a "centralized record keeping system", rather than "portability enabling software" as in the present invention.

Words of the claim are generally given their ordinary and customary meaning, unless it appears from the written description that they were used differently by the applicant. Where an applicant chooses to be his or her own lexicographer and defines terms with special meanings, he or she must set out the special definition explicitly and with "reasonable clarity, deliberateness, and precision" in the disclosure to give one of ordinary skill in the art notice of the change. See *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001), and MPEP § 2111.01. Pursuant to 35 U.S.C. § 112, 2nd paragraph, "[i]t is applicant's burden to precisely define the invention, and not the [examiner's]." In *re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997). Therefore, **it would not be proper for the examiner to give words of the claim special meaning when no such special meaning has been defined by the applicant in the written description.** Furthermore, it would not be proper for the examiner to allow a claim and issue the application with an examiner's statement of reasons for allowance setting forth the special definition given to the words of the claim when no such special definition has been defined by the applicant in the written description.

In this case, Applicant does not define "portability enabling software".

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In determining the scope of the claim, Examiner relies on Merriam-Webster Online Dictionary, which defines "portable" as "usable on many computers with little or no modification".

Johnson teaches (column 2):

In the context of a managed health care network, all providers who subscribe to or are members of a health care organization or network need not adopt standard patient identifiers or medical formats, hardware and software. The providers are able to continue to use their preexisting information systems, including medical record numbers or patient identifiers. Yet medical records are easily shared with other providers within the organization. Thus, the invention enables the collection and analysis of patient information without imposing significant extra cost and overhead on the providers.

According to Johnson, the disclosed system allows providers to view patient data without adopting any hardware or software changes.

This teaching fully meets the definition of "portable" as discussed above.

Therefore, the applied art teaches "portability enabling software".

On page 10 Applicant argues:

(b) The Examiner relies upon Johnson, Figure 7, label 702 ("master patient records"), as teaching "master control file" of the present invention. However, master patient records of Johnson do not correspond to the "master control file" of the present invention. Johnson, col. 13, lines 13 - 15 discusses "Records in tables 702 and 704... comprise "the MPI database, as indicated by dashed line 703". That is, tables 702 and 704 of Johnson correspond to a database rather than to the "master control file" of the present invention.

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Applicant has not specifically defined any structure for "master control file". Instead, Applicant appears to be reciting only functional limitations of this "master control file".

Therefore, any structure capable of performing the recited functionality would meet the claimed limitation.

Indeed, discussion has been provided above regarding how the database of Johnson provides for the ability of computer systems to interact without adopting a standardized hardware or software format.

On page 10-11 Applicant argues:

(c) The Examiner relies upon Johnson, col. 2, at lines 27 - 37, as discussing "controlling and providing interoperability" and "computer platforms operating on disparate operating systems". However, Johnson, col. 2, at lines 27-37 discusses that providers are able to continue to use their preexisting information systems, including medical record numbers or patient identifiers", rather than "controlling and providing interoperability of a medical records

system between computer platforms operating on the disparate operating systems" as in the present invention. Moreover, claims 1, 15, and 29 of the present application are amended to recite(using the recitation of claim 1 as an example):

"the master control file interfacing between a database of text and image data and medical records and each of the disparate operating systems".

Examiner is unable to ascertain the scope of Applicant's argument because Applicant does not clearly define the scope of the argued limitations.

Applicant is reminded that it is Applicant's burden to clearly define the scope of claim terms.

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Absent such controlling definitions, Examiner is unable to attribute any special definition to claim terms, and must interpret the claim broadly as is consistent with the disclosure.

In this case, the database of Johnson stores textual data, image data, and medical records (Figure 7). Johnson further teaches that different computer systems can interact, as discussed above and incorporated herein.

On page 11 Applicant argues:

(d) The Examiner asserts that Johnson teaches using software to interface with a database containing therein text data, image data, patient records (Figure 7), and the plurality of providers (Figure 2). However, col. 12, at lines 62-65 of Johnson refer to "tables of data stored by the server network 112 (FIG. 1) in the database 216 (FIG. 2)" rather than the "master control file" of the present invention as recited in claims 1, 15, and 28.

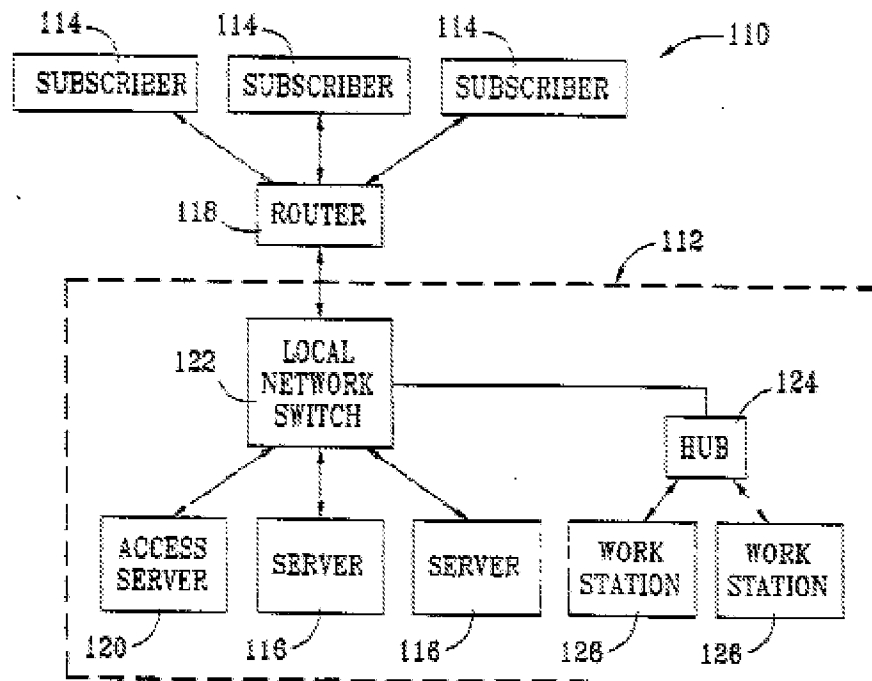
Similar rationale as discussed above is incorporated herein.

On page 11 Applicant argues:

(e) The Examiner relies upon Johnson, Figure 1 label 118, communicating with a plurality of subscriber computer systems over a network, as discussing "a personal computer" of the present invention. However, label 118 of Figure 1 of Johnson refers to a router rather than a personal computer.

Johnson teaches (Figure 1):

FIG. 1



Clearly, Johnson teaches a plurality of subscriber computers (Figure 1 label 110). This is considered to be a form of "personal computer".

On page 11 Applicant argues:

(f) Further, the Examiner's assertions in the Office Action that Johnson teaches "interfaces with the disparate operating systems" is respectfully traversed. The Examiner relies upon Figure 8, label 804 - 805 of Johnson. However, Figure 8, label 804-805 of Johnson discusses "transmit query to server" (804) and "match query to patient" (805) without discussing "interfaces between a database of text and image data and medical records and the disparate operating systems" as recited in the claims of the present application.

Similar rationale above is incorporated herein.

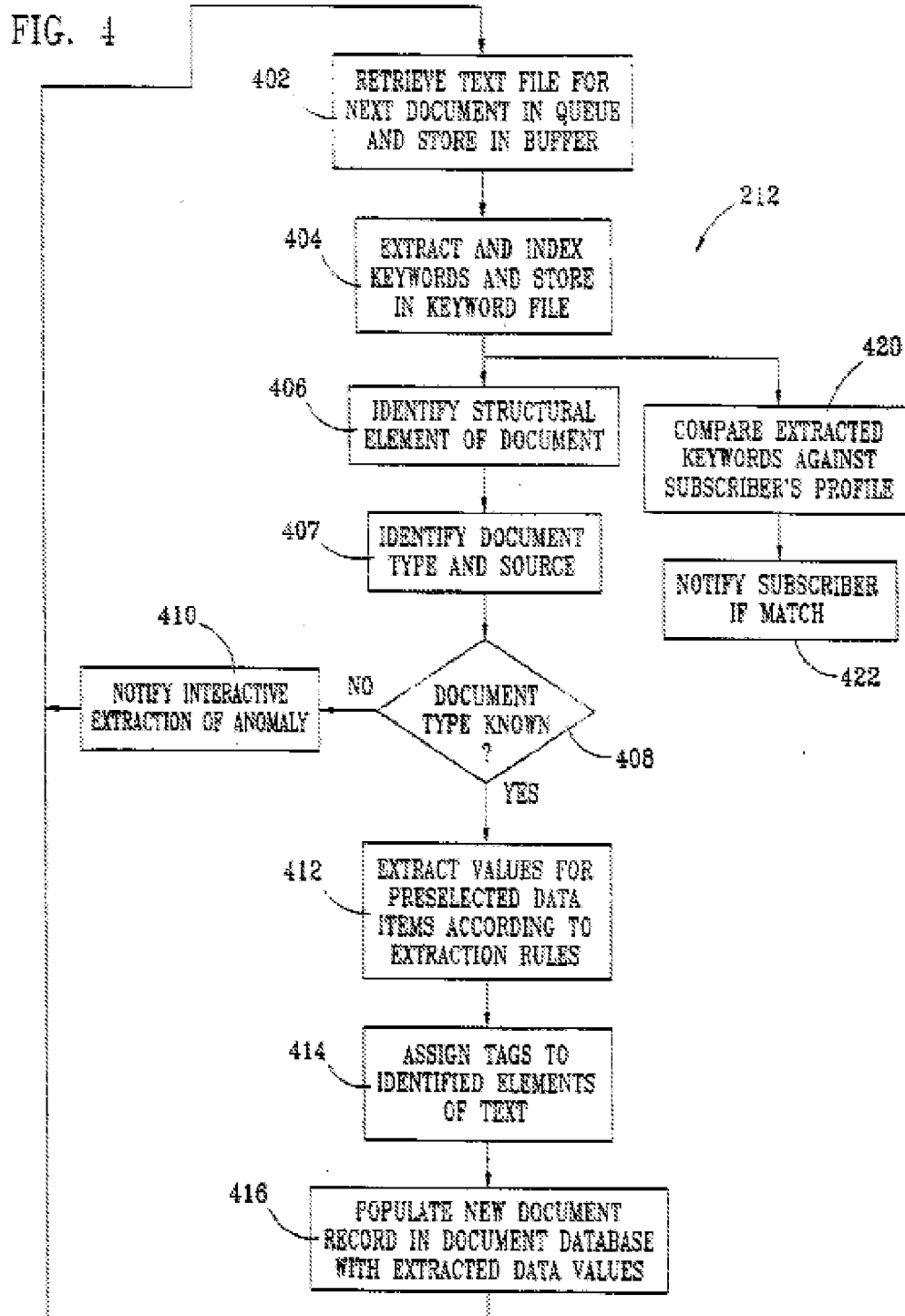
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On page 11 Applicant argues:

The Examiner's assertions that Johnson discusses (in the Abstract and throughout) "a plurality of image and text formats" is respectfully traversed. More specifically, Johnson does not appear to discuss or suggest "image" formats, nor does Johnson mention "image".

Johnson teaches:

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Johnson further teaches (column 7):

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The document management program 304 tracks files stored in the document repository 210, and retrieves document files in response to requests from other programs. These files are preserved in their original form to assure integrity of the data contained in the files. Copies of the files are only provided to processes when requested. Files containing an original document and other "views" of the text file, for example scanned images of hardcopy reports, are stored and associated by the document management program with the text file of the document. Commercially available programs may be used for file and document management.

According to Johnson, a document in any format is provided to the system. The document is then scanned and textual data is extracted. The original document in its original format is then stored along with a link to extracted textual data.

This teaching fully meets the claimed limitations.

On page 11-12 Applicant argues:

(g) Further, the Examiner relies on Johnson, Figure 7, to assert that the master patient record is capable of mapping documents containing therein text and image data stored in a database to patient records. Johnson does not discuss or suggest "image data", and, moreover, the master patient record of Johnson does not correspond to the "master control file" of the present invention.

(h) The Examiner further relies on Johnson, Figure 7, as discussing that the system is capable of maintaining the database. Claims 1, 15, and 29 recite "a database of text and image data and medical records", whereas Johnson does not discuss or suggest a database which includes "image data" as in the present invention.

Similar rationale above is incorporated herein.

On page 12 Applicant argues:

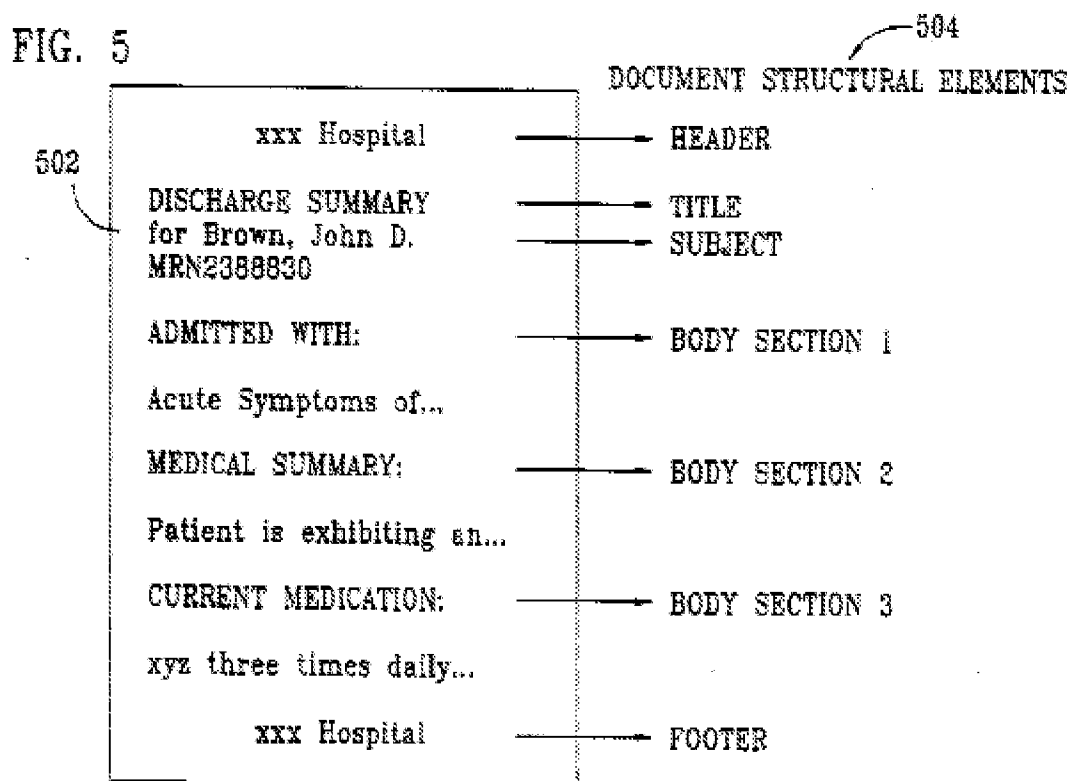
(i) The Examiner relies upon Johnson, Figure 4-6, as discussing receiving and storing the documents, but Johnson does not discuss "retrieving the patient episode data from the secure file and storing the patient episode data in the database" as recited in claims 1, 15, and 29 of the present application.

Examiner assumes that Applicant is arguing that the applied art do not teach "patient episode data".

Applicant provides no definition for this term.

Examiner has broadly interpreted this limitation to envelop any data pertaining to the patient.

Johnson teaches (Figure 5):



A discharge summary is considered to be a form of "patient episode data" because this document describes the care of a patient.

On page 12 Applicant argues:

(j) The Examiner relies upon Johnson, Abstract and throughout, as discussing retrieving the stored documents, wherein the documents are stored in the native formats. However, Johnson does not discuss or suggest "a plurality of image and text formats" as recited in claims 1, 15, and 29 of the present application.

(k) The Examiner relies upon Johnson, Figure 7, Abstract as discussing the master patient record is capable of linking with a plurality of documents in any format, and upon Johnson, Figure 1, as discussing plurality of subscribers. Johnson does not discuss or suggest "a plurality of image and text formats" as recited in claims 1, 15, and 29 of the present application.

(l) The Examiner further asserts that Johnson, Figure 2, providing patient data electronically over a network reads on "patient episode data". However, Johnson, col. 6, at line 24, in reference to Figure 2, discusses "patient demographic information" rather than "patient episode data" as recited in claims 1, 15, and 29 of the present application.

Similar rationale above is incorporated herein.

On page 12 Applicant argues:

Further, the Examiner asserts that Johnson teaches that computer security is well known and should be applied to medical information (col. 14, at lines 4-25). Johnson discusses a "privileges mask" but not "capturing patient episode data into a secure file" as recited in claims 1, 15, and 29 of the present application.

The Examiner asserts that Johnson col. 5, lines 23-25, discusses that e-mail is also known in the art and may be used to communicate medical data, however, Johnson, col. 5, at lines 23-25 discusses "E-Mail services for delivering messages between providers". Johnson does not discuss "capturing patient episode data into a secure file" and "transmitting the secure file as an e-mail attachment" as recited in claims 1, 15, and 29 of the present application.

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In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Examiner did not rely on Johnson for the feature of a secure file. Clearly, Johnson would not have this feature. Instead, Examiner relied on AAPA for this feature.

On page 13 Applicant argues:

The Examiner asserts that Johnson, Figure 2, label 208, teaches receiving the transmitted patient data for storage. However, Johnson, Figure 2, label 208 is a "Report Handler".

The report handler of Johnson receives softcopies of the document and stores for processing. Clearly Johnson teaches that the data is then sent for batch processing (label 212) and storage (label 210).

On page 13 Applicant argues:

In addition, the Examiner admits that Johnson does not discuss "a secure file, transmitting the secure file as an e-mail attachment, retrieving the patient episode data from the secure file".

Similar rationale above is incorporated herein.

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On page 13 Applicant argues:

Johnson teaches away from "transmitting a secure file as an e-mail attachment" in that Johnson, col. 14, lines 4-25, discusses "each record contains a field for an E-mail address" and the use of "a privileges mask". That is, Johnson discusses including the e-mail address into the record rather than attaching the record to an e-mail. Johnson discusses the use of "privilege level" rather than "transmitting a secure file as an e-mail attachment" as recited in the claims of the present application.

Further, the Examiner's assertions that the "skilled artisan would have recognized the benefit that since physicians are already familiar with emailing, it would be easier to use email to submit patient data than to train physicians to use a different interface" are respectfully traversed. Johnson, col. 14, lines 4-25, teaches away for the reasons set forth above.

Johnson does not teach away from the claimed arrangement because nowhere does Johnson criticize, discredit, or otherwise discourages the claimed solution.

Indeed, in order to teach away from the claimed combination, Johnson must first teach the claimed combination. Since Applicant acknowledges and does not dispute that Johnson does not teach the claimed combination, it would not be possible for Johnson to teach away from this claimed combination.

Applicant is reminded that failing to teach a feature is not the same as teaching away. Instead, a reference that teaches away would have all claimed features, but such a reference would discourage the combination of such features into a single embodiment. Clearly, Johnson does not do so.

On page 13 Applicant argues:

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Regarding claim 2, the Examiner's assertions that any hand-held device within the scope of claim 1 and capable of communicating with the apparatus "inherently" executes "medical software" to communicate with the claimed apparatus are respectfully traversed. The Examiner is respectfully requested to support the assertion of inherence by citing a reference or by affidavit or withdraw same.

Applicant's request is declined with the following explanation being sufficient proof of inherency.

In this case, the software necessary to communicate between the subscriber computer and the server is considered to be "medical software" because this software is capable of processing medical data.

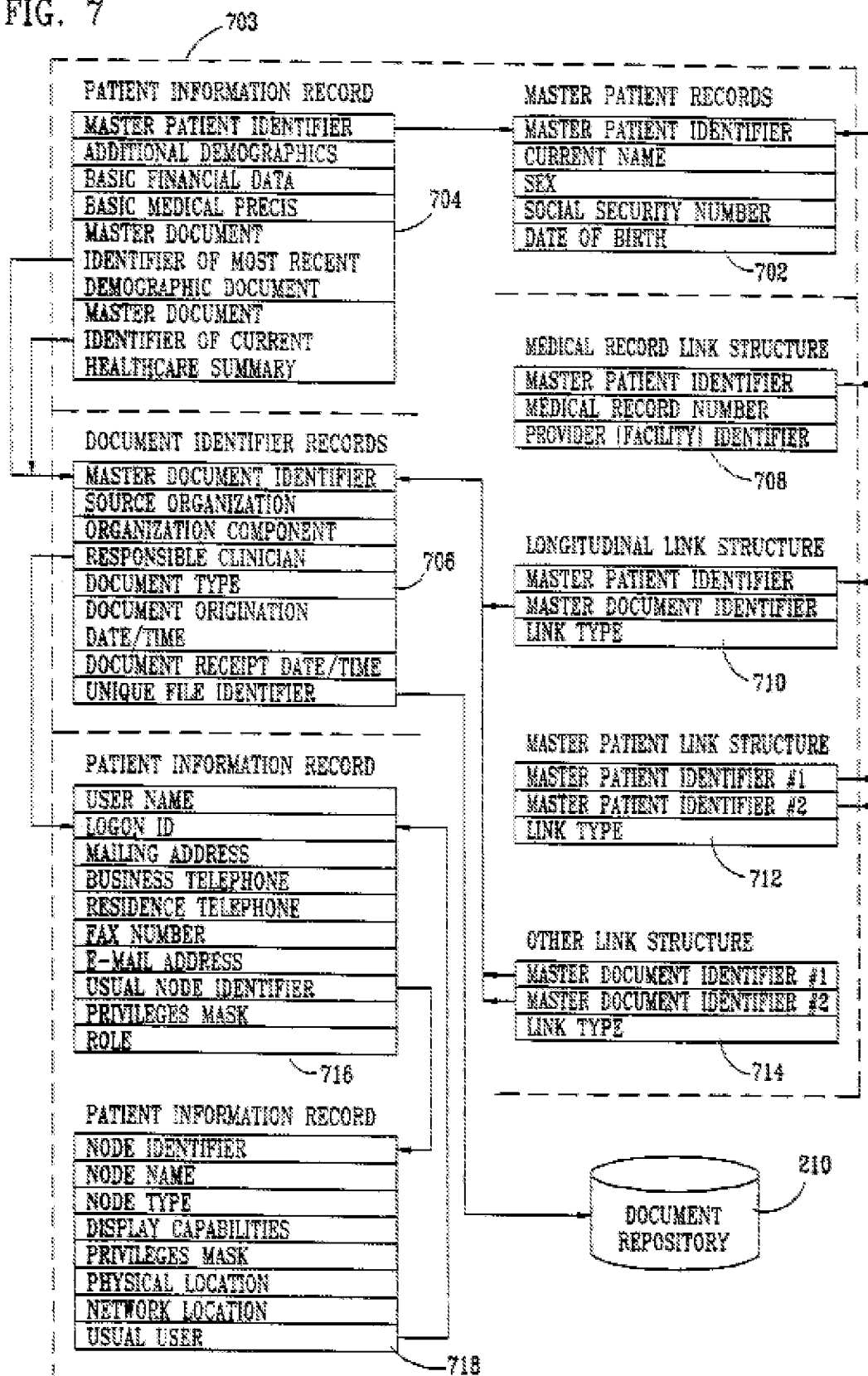
Applicant is reminded that no definition for "medical software" is provided.

On page 13 Applicant argues:

Regarding claim 3, the Examiner asserts that Johnson teaches that the system is capable of accepting documents from a plurality of subscribers (Figure 1) and retrieving information for the plurality of subscribers (Figure 8). However, Johnson does not discuss or suggest "the master control file provides the medical records system with the interoperability to populate, maintain and retrieve information from its database" as recited in claim 3 of the present application.

Johnson clearly teaches that the system is capable of storing, maintaining, and retrieving data (Figure 7):

FIG. 7



On page 13-14 Applicant argues:

Regarding claim 4, the Examiner asserts that Johnson teaches (Figures 3 and 7) that the system is capable of maintaining the database. However, Johnson does not discuss or suggest "the master control file controls path and name of folder images, path to and name of the

database, database field names, attributes, and locations on the folder image" as recited in claim 4 of the present application.

The Examiner's assertions that Examiner considers a database table containing therein the documents to be a "folder" are respectfully traversed. Johnson does not discuss "folder images" as recited in claim 4 of the present application.

Applicant provides no definition for "folder".

In determining the scope of the claim, Examiner relies on Merriam-Webster Online Dictionary, which defines "folder" as "an organizational element of a computer operating system used to group files or other folders together".

In particular, the system of Johnson maintains all access to the data stored in the database (Figure 7).

This arrangement is considered to be an organization element of a computer operating system used to group files, and fully meets the limitation "folder".

On page 14 Applicant argues:

Regarding claim 5, the Examiner's assertions are respectfully traversed. Figure 5 of Johnson represents a document rather than meeting the limitations recited in claim 5 of "each field name is retained and utilized by the medical records system when it populates and retrieves information".

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Johnson teaches retaining the original document in its original format, as discussed above, and incorporated herein. This teaching suggests that the original field name is retained in the original document. See Figure 5 label "ADMITTED WITH", "MEDICAL SUMMARY", "CURRENT MEDICATION". These are all original field names and are retained in the document in their original format.

On page 14 Applicant argues:

Regarding claim 7, the Examiner asserts that Johnson (Figure 7 label 706) discusses linking the document identifier to the master patient identifier for display. However, Johnson does not discuss or suggest "a pointer to and name of graphic images indicates the images that display when the medical records system is executed" as recited in claim 7 of the present application.

In Figure 7 Johnson teaches that an arrow is linked from the document identifier to the original document as stored in the database. This is a form of "pointer".

On page 14 Applicant argues:

Regarding claim 11, the Examiner asserts that Johnson discusses that the system is capable of allowing remote subscribers to review patient records (Figure 8). However, Johnson does not discuss "wherein the records system storing patient medical records to enable health care providers to view health indicators remotely" as recited in claim 11 of the present application.

Applicant does not define "health indicators".

Examiner broadly interprets this limitation to envelop any data capable of describing the health of the patient.

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As seen from at least Figure 5, many pieces of data regarding the health of the patient are provided to the subscriber. This meets the limitation "health indicators" because the displayed data describe the patient's health.

On page 14-15 Applicant argues:

Regarding claim 12, the Examiner asserts that "encryption is a form of 'compresses'". Claim 12 of the present application recites "wherein the apparatus captures, compresses, encrypts, and encapsulates patient episode data into the secure file". That is, claim 12 recites "compresses" and "encrypts".

Johnson does not discuss or suggest the features recited in claim 12 of "wherein the apparatus captures, compresses, encrypts, and encapsulates patient episode data into the secure file".

Examiner agrees.

Examiner does not rely on Johnson for this feature. Instead, AAPA is relied on for teaching the feature of encrypting.

Therefore, this argument does not overcome the rejection because the applied art is the combination of Johnson and AAPA, not Johnson alone.

On page 15 Applicant argues:

Regarding claim 13, Johnson does not discuss or suggest "wherein the apparatus transmits the secure file to a repository mail server, which de-encapsulates and uncompresses the secure file and stores the de-encapsulated, uncompressed secure file into a patient medical record" as recited in claim 13 of the present application.

As discussed above, AAPA teaches that email is old and well known.

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Therefore, encrypting and decrypting email necessarily involves servers for transmitting the mail, and requisite software on each computer to encrypt/decrypt the email messages.

On page 16 Applicant argues:

Amit, page 185, column 2 Section Distribution, discusses distributed databases whereas Johnson identifies the problem of "centralizing and sharing medical records" (col. 1, lines 51 and 52) and discusses that a "centralized record keeping system receives record documents from one of a plurality of independent service providers" as Johnson's invention (col. 2, at lines 13-15). Thus, combining Amit with Johnson would not achieve the present invention.

Therefore, neither Johnson, the Examiner's assertions of Official Notice, or Amit, either alone or in combination, discusses or suggests "pointer to and the name of the database

indicates the database which the medical records system will populate and retrieve information from" of the present invention.

Amit teaches substituting a single database with a plurality of remotely distributed databases. Therefore, the combined teachings of the applied art suggests that the storage medium would be a plurality of distributed database, and navigation between each database to locate the appropriate data is provided by a directory or some form of query (reads on "pointer") according to Amit.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tran (Ken) N. Nguyen whose telephone number is 571-

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270-1310. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:00 pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Morgan can be reached on 571-272-6773. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tran Nguyen/

Examiner, Art Unit 3626

12/06/2010